UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,726	07/29/2003	Judson A. Bradford	BRP / 200	7525

26875 7590 02/13/2007

WOOD, HERRON & EVANS, LLP
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202

EXAMINER	
GROSSO, HARRY A	
ART UNIT	PAPER NUMBER
3781	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	02/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/629,726
Filing Date: July 29, 2003
Appellant(s): BRADFORD, JUDSON A.

J. Dwight Poffenberger, Jr.

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 11, 2006 appealing from the Office action mailed June 16, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,403,638	BAUM	09-1983
5,069,514	SHERMAN	12-1991
4,610,286	CYR	09-1986

6,535,606 COX 03-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. Claims 1-3, 6-10, 12, 21, 23, 26-28, 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baum (US 4403638) in view of Sherman (US 5069514).

With respect to claim 1, Baum discloses the following:

- A partition assembly including partitions (Fig. 4)
- A container having walls extending upwardly from a bottom, defining an interior of a container (Fig. 4, item 23)
- Partitions being of length such that they do not bend when inserted (Fig. 4)
- Partition assembly is held in the interior of the container by at least one hook and loop fastener (Fig. 4, item 32)

However, Baum fails to disclose the partitions being intersected and slotted arranged in a matrix. Nonetheless, Sherman teaches a partitioned container having similar flexible fabric partitions wherein the partitions are intersecting and slotted, and arranged in a matrix, as shown in Fig. 4, thereby providing a versatile design. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the partitions of Baum to be intersected slotted and arranged in a matrix as taught by Sherman so as to provide a versatile design.

With respect to claim 2, Baum discloses the hook and loop fastener having a first component secured to the container walls (Fig. 4, the inner wall fabric), and a second component secured to a partition, as shown in Fig. 4, item 32.

With respect to claim 3, Baum discloses the hooks being engaged with said loops, as shown in Fig. 4.

With respect to claim 6, Baum discloses the second component functioning as a flexible extension of the partition, as shown in Fig. 4 wherein the partitions clearly extend beyond the partition.

With respect to claim 7, Baum discloses the second component having an exterior surface with a plurality of loops, as shown in Fig. 4, item 32.

With respect to claim 8, Baum discloses the second component being a flexible tab (Fig. 4).

With respect to claims 10 & 28 & 33, Baum discloses the following:

- A container (23)
- A plurality of first partitions
- A plurality of second partitions
- One of said partitions having a flexible tab at the end thereof, said flexible tab comprising a second component of a hook and loop fastener (32), adapted for engagement with said first component of said hook and loop fastener, whereby the tab can be bent to either side of said partition to engage said first component, wherein the tab 32 can clearly bent to either side, thereby engaging the first component of the hook and loop fastener

However, Baum fails to disclose the partitions being slotted and arranged in a matrix. Nonetheless, Sherman teaches a partitioned container having similar flexible fabric partitions wherein the partitions are intersecting and slotted, and arranged in a matrix, as shown in Fig. 4, thereby providing a versatile design. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the partitions of Baum to be intersected slotted and arranged in a matrix as taught by Sherman so as to provide a versatile design.

With respect to claim 12, Baum discloses the following:

- A container (23)
- A plurality of first partitions
- A plurality of second partitions
- One of said partitions having a flexible tab at the end thereof, said flexible tab comprising a second component of a hook and loop fastener (32), adapted for engagement with said first component of said hook and loop fastener, whereby the first component can engage the partition on either side (Fig. 4).
- Each of first partitions being shorter than the width of the interior of the container (Fig. 4)

However, Baum fails to disclose the partitions being slotted and arranged in a matrix. Nonetheless, Sherman teaches a partitioned container having similar flexible fabric partitions wherein the partitions are intersecting and slotted, and arranged in a matrix, as shown in Fig. 4, thereby providing a versatile design. Therefore, it would have been

obvious to one of ordinary skill in the art at the time of the invention to configure the partitions of Baum to be intersected slotted and arranged in a matrix as taught by Sherman so as to provide a versatile design.

With respect to claim 21, Baum discloses the following:

- A container
- Partition assembly that fits in the container without bending of said partitions
- Partition assembly is held in the container by at least one hook and loop fastener, with a first component (inner wall material) and second component 32, said second component being adapted to bend counterclockwise and clockwise, wherein since the tab is flexible, it is capable of bending as such

However, Baum fails to disclose the partitions being slotted and arranged in a matrix. Nonetheless, Sherman teaches a partitioned container having similar flexible fabric partitions wherein the partitions are intersecting and slotted, and arranged in a matrix, as shown in Fig. 4, thereby providing a versatile design. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the partitions of Baum to be intersected slotted and arranged in a matrix as taught by Sherman so as to provide a versatile design.

With respect to claim 23, Baum discloses hooks engaging corresponding loops, as shown in Fig. 4.

With respect to claim 26, Baum discloses the second component being a planar extension of the partition, wherein since the portion of the tab 32 that extends over the edge of the partition, it acts as a planar extension that extends outwardly.

With respect to claim 27, Baum discloses the second component having an exterior surface with a plurality of loops (32)

B. Claims 4, 5, 9, 11, 13, 22, 24, 25, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baum in view of Sherman as applied to claim 1 above, and further in view of Cyr (US 4610286).

With respect to claims 4, 5, 24, 25, Baum as modified above discloses the claimed invention except for the second component being adhesively secured to the partition end. However, Cyr teaches a container with flexible partitions wherein the loop fasteners attached to the inner walls of the container are secured via adhesives, or sewing, equivalently (Col 6, Lines 60-65), thereby providing an alternate means of connection. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the connection of Baum, of the second component to the partition via sewing, to be secured via adhesives therewith, as taught by Cyr so as to provide an alternate and equivalent means of connection.

With respect to claims 9, 11, 13, 22, 29, Baum as modified above discloses the claimed invention except for the partitions being plastic. However, Cyr teaches the partitions being plastic (Col 6, Lines 25-28), thereby providing a durable material. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the fabric partitions of Baum to have a plastic inner core as taught by Cyr so as to provide a durable material.

C. Claims 30, 32 are rejected under 35 U.S.C. 103(a) as being obvious over Baum in view of Sherman as applied to claim 1 above, and further in view of Cox (US 6535606 B2).

With respect to claims 30 and 32, Baum as modified above discloses the claimed invention except for the second component having an adhesive removable backing. However, Cox discloses hook and loop fasteners with a release backing configuration (Col 2, Lines 47-54), thereby providing a convenient means of implementing said hook and loop fasteners. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the hook and loop fasteners of Baum as modified by Sherman to have a peel-back adhesive as taught by Cox so as to provide a convenient means of implementing said hook and loop fasteners.

(10) Response to Argument

A. Claims 1-3, 6-10, 12, 21, 23, 26-28, 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baum (US 4403638) in view of Sherman (US 5069514).

Appellant argues that Baum fails to teach or suggest a partition assembly, wherein Appellant argues that Baum instead discloses individual partitions. However, Baum discloses a series of partitions as shown in Fig. 4, thereby disclosing a partition assembly.

Appellant also argues that Sherman fails to disclose the partition assembly being attached inside a container. However, Sherman discloses the partition assembly being placed within a dresser drawer (Col 1, Lines 5-7), and Sherman is used to teach the use

of first and second slotted partitions arranged in a matrix. The base reference, Baum teaches attaching the partition in the container with at least one hook and loop fastener.

Appellant argues the combination of Baum and Sherman is unobvious in that they are used for different purposes. Nonetheless, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, In this case both Baum and Sherman disclose the use of a partition assembly to create compartments within a container, knowledge that would be generally available to one of ordinary skill in the art.

Appellant argues that modifying the partition assembly of Baum to be of a matrix configuration as taught by Sherman would destroy the whole purpose of Baum, i.e., the ability to adjust and move the partitions anywhere within the interior of the camera carrying case. However, Sherman discloses that the number of partitions can be adjusted, (see "not necessarily equal" – Col 2, Lines 30-35) i.e., partitions can be removed and added as desired by the user and a plurality of notches would allow variation in the positioning of the partitions. Therefore, even if the partition assembly of

Baum is modified by Sherman to be of a matrix configuration, it is still adjustable and the partitions can be moved about the interior of the camera bag.

Appellant also argues that Baum fails to disclose the strips 36-39 forming extensions of the partitions in the plane of the partitions. In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., that the strips do not form extensions of the partitions in the plane of partitions) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims recite the second component of the fastener (the strips 36-39) functions as a generally planar extension of the partition. The claims do not define the plane of the strips in relation to the plane of the partition. The strips 36-39 form generally planar extensions of the partition as can be seen in Figure 4 of Baum, thus meeting the limitations of the claims.

Appellant also argues that Baum fails to disclose hook and loop fasteners. However, Baum discloses VELCRO, which is well known to one of ordinary skill in the art to be equivalent to a hook and loop fastener. Moreover, Baum does indeed disclose hook and loop fasteners wherein one component is attached to the partitions (36-39) and the fabric layer on the inner walls of the container acts as the other component (Col 3, Lines 7-12).

B. Claims 4, 5, 9, 11, 13, 22, 24, 25, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baum in view of Sherman as applied to claim 1 above, and further in view of Cyr (US 4610286).

Appellant argues that modifying the partition assembly of Baum to be of a matrix configuration as taught by Sherman would destroy the whole purpose of Baum, i.e., the ability to adjust and move the partitions anywhere within the interior of the camera carrying case. However, Sherman discloses that the number of partitions can be adjusted, (see "not necessarily equal" – Col 2, Lines 30-35) i.e., partitions can be removed and added as desired by the user and a plurality of notches would allow variation in the positioning of the partitions. Therefore, even if the partition assembly of Baum is modified by Sherman to be of a matrix configuration, it is still adjustable and the partitions can be moved about the interior of the camera bag.

Appellant argues that no component of the hook and loop fastener in Cyr is adhesively secured to the partition since Cyr teaches a component of a hook and loop fastener secured to the wall of the container with adhesive as an alternate to sewing. In response, Cyr teaches the use of adhesive as an alternative to sewing for securement of one component of a hook and loop fastener and Cyr does not teach that the alternative securement can not be used with the second component of the hook and loop fastener. Therefore, it would be an obvious teaching of Cyr that an adhesive can be used as an alternative securement means for a component of the hook and loop fastener.

C. **Claims 30, 32 are rejected under 35 U.S.C. 103(a) as being obvious over Baum in view of Sherman as applied to claim 1 above, and further in view of Cox (US 6535606 B2).**

Appellant argues that modifying the partition assembly of Baum to be of a matrix configuration as taught by Sherman would destroy the whole purpose of Baum, i.e., the ability to adjust and move the partitions anywhere within the interior of the camera carrying case. However, Sherman discloses that the number of partitions can be adjusted, (see "not necessarily equal" – Col 2, Lines 30-35) i.e., partitions can be removed and added as desired by the user and a plurality of notches would allow variation in the positioning of the partitions. Therefore, even if the partition assembly of Baum is modified by Sherman to be of a matrix configuration, it is still adjustable and the partitions can be moved about the interior of the camera bag.

Appellant argues that there is no motivation to combine Cox with Baum and Sherman to teach a removable backing covering an adhesive surface. It has been held that a prior art reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Cox and the appellant are concerned with the same problem providing a removable cover on an adhesive surface on a component of the hook and loop fastener. Cox teaches use of a release (removable) backing (see column 2, lines 42-64) to cover the adhesive surface on hook and loop fastener components prior to application.

In response to appellant's arguments with regard to all of the claims that the examiner's conclusions of obviousness are based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Harry A. Grosso

Conferees:

Anthony Stashick

Nathan Newhouse